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SEC

SERVICE DATE - MAY 15, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 21989 (Sub-No. 3)

PENNSYLVANIA RAILROAD COMPANY—MERGER—NEW YORK CENTRAL
RAILROAD COMPANY

(ARBITRATION REVIEW)

May 13, 1997

NOTICE TO THE PARTIES:

The attached decision in this proceeding, served May 7, 1997, was issued prior to compilation of a service list and, consequently, was not served on all parties. Service is hereby effected on defendant Penn Central Corporation, 1 East 4th Street, Cincinnati, OH 45202 (Attn: Michael Cioffi, Staff Vice President and Assistant General Counsel), and its attorney of record, William F. Kershner, Pepper, Hamilton & Scheetz, 1235 Westlakes Drive, Berwyn, PA 19312.

This delayed service on defendant does not alter the service date of the decision for purposes of claimants' deadline under ordering paragraph 1.

Vernon A. Williams
Secretary

SERVICE DATE - MAY 7, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 21989 (Sub-No. 3)

PENNSYLVANIA RAILROAD COMPANY—MERGER—NEW YORK CENTRAL
RAILROAD COMPANY

(ARBITRATION REVIEW)

Decided: May 2, 1997

On April 10, 1997, 17 former employees (claimants) of the Cleveland Union Terminals Company, a subsidiary of the former New York Central Railroad Company (NYC), filed a second petition for review (Petition) of an arbitration committee's decision denying their claims for benefits under the employee protective conditions imposed in the merger of NYC into the former Pennsylvania Railroad Company.¹ Claimants' prior petition in Finance Docket No. 21989 (Sub-No. 2) was dismissed (STB served Aug. 1, 1996) for failure to provide any jurisdictional grounds or substantive issues for review. Claimants filed a petition for review in the United States Court of Appeals for the Sixth Circuit,² but stipulated to a voluntary dismissal when the Board agreed to allow them another opportunity to make their case. This proceeding ensued.

A preliminary examination of the Petition reveals that claimants have failed to submit a number of the documents upon which they rely.³ Claimants state that they "incorporate by reference any and all documents previously submitted to the Surface Transportation Board" in the prior proceeding. It is unclear what documents are referred to. Because the stipulation for dismissal was intended to allow claimants to compile and submit a complete record,⁴ they may not rely on earlier filings which the Board may not possess. Moreover, under 49 CFR 1114.5, a party seeking to offer in evidence a portion of the record from another Board proceeding must submit a true copy thereof. In view of the history of the prior proceeding, it is essential that the Board and all parties have absolutely all evidence upon which a decision is to be based.

The Board has discretion under 49 CFR 1104.10 to reject any deficient filing. Under the circumstances, however, the Petition will not be dismissed provided that within 20 days claimants supplement the record and serve opposing parties with all the evidence upon which they will rely. Replies to the Petition will be due 20 days thereafter.

It is ordered:

1. Claimants' petition for review will be dismissed unless, within 20 days after service of this decision, claimants submit and serve on defendants all evidence on which they will rely.

¹ See *Pennsylvania R. Co.—Merger—New York Central R. Co.*, 327 I.C.C. 475 (1966).

² Among other arguments, claimants contended that they had filed a pleading of which the Board had no record.

³ This includes, but is not limited to, claimants' exhibits 54, 71, 72, and 73; a February 16, 1965 "Top and Bottom Agreement" and three subsequent pre-merger labor agreements (Petition at 5-6); and a July 11, 1969 agreement (Petition at 10).

⁴ Contrary to claimants' statement, Petition at 2, the terms of the stipulation were not simply that they refile their petition, but that they "file with the Board documents asserting the basis for that challenge. . . ."

2. Defendant(s) must reply by 20 days after submission and service of claimants' additional evidence.

3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary